

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19564
Docket Number MS-19756

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Mr. Adolph C. Lee
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(Gulf, Mobile and Ohio Railroad Company

STATEMENT OF CLAIM: This is to serve **notice**, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on June 5, 1972 covering an unadjusted dispute between myself and the Gulf, Mobile and Ohio Railroad Company involving the question of my unlawful discharge from employment.

OPINION OF BOARD: On January 10, 1972, a Mr. P. J. DeWolf wrote a letter to Carrier stating that on January 7, 1972, he (P. J. DeWolf) was a passenger on Carrier's Train No. 303 from Chicago to St. Louis. The letter further stated that he had received very unsatisfactory service in the diner; he had to wait for long periods of time for service; that the waiter (Claimant) spent most of his time wandering up and down the aisles moaning to passengers about how bad things were; that he (DeWolf) left a minimum tip because of the bad service and was later accosted by the Claimant concerning the small tip. As a result of this letter, Claimant was charged with improper treatment and harassment of a passenger and was instructed to attend a formal investigation on February 7, 1972, in connection with this charge. An investigation was held as scheduled, and on February 10, 1972, a letter from Carrier was addressed to Claimant informing him (Claimant) that he was dismissed from service. On February 25, 1972, the General Chairman wrote a letter to the Executive Vice-President and General Manager of Carrier requesting a conference in regard to the appeal of Claimant on a "leniency basis". The conference was held and the appeal was denied. The Petitioner alleges that prior to the incident on January 7, 1972, Claimant had at no time previously been suspended or subject to discharge by any former employer; that the hearing of February 7, 1972, was not a full, fair or impartial hearing; that Claimant was misinformed, ill advised and did not understand his rights of appeal. The Petitioner also contends that much of the evidence used by Carrier was inadmissible because of hearsay. Carrier contends that this claim has never been handled on the property except in a request for return to service on a leniency basis; that Claimant admitted his guilt and that reinstatement of an employee on a leniency basis is solely within the managerial discretion of Carrier.

The contentions of Carrier in this dispute are well taken. The only claim handled on the property concerned itself with a request for leniency; the appeal to this Board concerns itself with a full reinstatement of Claimant with back pay based on contentions which were not handled on the property.

The awards of this Board are numerous and consistent in upholding the basic and fundamental principle that if the claim as submitted to this Board does not encompass the claim handled on the property, then such claim should be dismissed. See Awards 15063 (Ives), 13235 (Dorsey), 15847 (Engelstein), 18480 by this referee and others.

For the foregoing reasons, this claim will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.